IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO. 2951 OF 2006

M/s. Mount Industrial Estate & Ors. ... Petitioners.

V/s.

State of Maharashtra & Ors. ... Respondents.

....

Ms. Madhavi Nalawade for the Petitioner.

Mrs. Manish R. Kapadia for Respondent Nos.5 to 6.

Mrs. Archana Khan for Respondent No.3

Mr. P.G. Sawant for Respondent Nos.1 and 2.

CORAM : DR. D.Y.CHANDRACHUD,J.

20TH DECEMBER, 2006.

ORAL JUDGMENT :-

1. Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. An order passed by the Deputy Registrar, Co-operative Societies, K(East) Ward on 26th September 2006 is called into question before the Court.

3. The Deputy Registrar has held that there was a breach of the provisions of sub-Section 1 of Section 145 of the Maharashtra Co-operative Societies' Act, 1960. On holding the Petitioner guilty, the Deputy Registrar has recorded an order of conviction and punished the Petitioners with a fine in the amount of Rs.500/-. The impugned order also contains a recommendation to the Joint Registrar to lodge a criminal prosecution.

4. The First Petitioner is a partnership firm of which the Second and Third Petitioners and the Fifth and Sixth Respondents are partners. The First Petitioner claims to be the owner of certain lands at Marol. The Petition recites that two buildings were constructed thereon and the First Petitioner agreed to sell premises therein to various purchasers. The Third Respondent instituted a suit for specific performance before this Court claiming that there was an agreement to sell between him and the First Petitioner. No ad-interim relief was granted in a Motion which was taken out in the suit. An appeal has been filed

against the order of the learned Single Judge declining ad-interim relief. On 7th June 2006, the Third Respondent filed an application before the Deputy Registrar seeking the appointment of an Administrator. On 13th June 2006, the Deputy Registrar fixed the hearing of the application on 21st June 2006. On 27th July 2006, the Deputy Registrar issued a notice to show cause to the Petitioners as to why punitive action should not be initiated against them for a breach of the provisions of sub-Section 1 and 2 of Section 145 of the Maharashtra Co-operative Societies' Act, 1960. The gravamen of the allegation against the Petitioners was that they represented that a Co-operative Society had been formed when in fact no Co-operative Society was in existence. The Petitioners submitted a reply denying knowledge of the existence of any Co-operative Society. The Deputy Registrar passed an order on 26th September 2006 holding that the petitioners were guilty of a misuse of the word "co-operative" and that in the process they had derived several benefits inter-alia on account of stamp duty, property taxes, water charges and electricity charges.

Holding the Petitioners guilty, the Deputy Registrar imposed a fine of Rs.500/- and recommended that the Divisional Joint Registrar, Co-operative Societies should separately launch a criminal prosecution.

5. On behalf of the Petitioners, the only submission that has been urged is that the Deputy Registrar had no power to take cognisance of a Criminal offence under Chapter XII of the Maharashtra Co-operative Societies' Act, 1960 and that accordingly, the order of conviction and the fine that has been imposed must be quashed and set aside.

6. Section 145 of the Maharashtra Co-operative Societies' Act, 1960 falls in Chapter XII which is entitled "Offences and Penalties". Section 145 provides as follows :-

> **145. Prohibition of use of the word "Co-operative" -(1)** No person, other than a society registered, or deemed to be registered, under this Act and a person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into force, shall without the sanction of the State Government, function, trade or carry on

> business under any name or title of which the word "co-operative", or its equivalent in any Indian language, forms part.
>
> (2) Every person contravening the provisions of the foregoing sub-section shall, on conviction, be punished with fine which may extend to five hundred rupees.

7. Section 146 provides for certain offences. Section 147 lays down the punishment for offences under Section 146. Section 148 of the Act is to the following effect :-

> **148. Cognizance of offences.-(1)** No Court inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence under this Act.
>
> (2) [-------]
>
> (3) No prosecution under this Act shall be lodged, except with the previous sanction of the Registrar.

8. These provisions establish that under Sub-Section (1) of Section 145 the use of the word "Co-operative" or its equivalent is prohibited save and except by a society registered or deemed to be registered under the Act. Under sub-Section 2 a person contravening the provisions of sub-section (1) is liable to be convicted and the punishment which is provided is a fine which may extend to

Rs.500/-. Under Section 148 an offence under the Act cannot be tried by a Court inferior to that of the Metropolitan Magistrate or a Judicial Magistrate of the First Class. Under sub-Section (3) no prosecution can be lodged except with the previous sanction of the Registrar.

9. The Deputy Registrar is an Officer of the State and is competent to discharge only those duties and functions which are conferred upon him. The Deputy Registrar has absolutely no jurisdiction or power to take cognizance of an offence or to try offences falling under Chapter XII of the Act. Plainly, the jurisdiction to do so is vested only with a Court not inferior to the Metropolitan Magistrate or a Judicial Magistrate of the First Class.

10. In the circumstances, the assumption and exercise of jurisdiction by the Second Respondent was plainly contrary to law. The order of the Second Respondent is accordingly quashed and set aside. There shall be an order accordingly in these terms. The fine which has been recovered by

the Second Respondent is without the authority of law and shall be refunded back to the Petitioners. Having said this, it would be necessary to observe that the present order shall not be construed as impeding the investigation into the alleged misuse of the word "Co-operative" by the Petitioners and into the allegation that the Petitioners received undeserved benefits on the basis of a false representation that a co-operative society had been formed. The Competent Authority vested with the power to carry out investigation shall be at liberty to do so. However, it needs to be emphasised that if a prosecution has to be launched for a breach of the provisions of the Act, this can only be in the manner provided and subject to the limitations enacted in the provisions of the Maharashtra Co-operative Societies' Act, 1960.

11. Rule is made absolute in terms of prayer clause (a).

12. The Petition shall accordingly stand disposed of in these terms. There shall be no order as to costs.